

JUDICIAL DISTRICT—FIFTEENTH.

CHAP. 20.—[S. B. No. 111.] An act to amend section 1 of an act passed at a regular session of the Twenty-third Legislature of Texas, approved April 19, 1893, amending section 1 of an act passed by the Twenty-third Legislature of Texas, reorganizing the Fifteenth Judicial District, and defining the time for holding the courts in said Fifteenth Judicial District, and add section 1a.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That section 1 of said act shall read as follows:

Section 1. The Fifteenth Judicial district of the State of Texas shall be composed of the county of Grayson, and the district court shall be held therein as follows: A term beginning on the first Monday in September of each year, and may continue in session until and including the last Saturday in December. A term beginning on the first Monday in January of each year, and may continue until and including the last Saturday in March of each year: *Provided*, there shall be no grand jury selected and empaneled for said January terms of said court. A term beginning on the first Monday in April of each year, and may continue until the business is disposed of.

SEC. 2. The fact that there are a great number of bills before the Legislature, and the crowded condition of the calendar, constitutes an emergency and a public necessity exists for the suspension of the constitutional rule requiring bills [to be] read on three several days, and said rule is hereby suspended.

Approved March 19, 1895.

IRRIGATION.

CHAP. 21.—[S. H. B. No. 120.]—An act to encourage irrigation and to provide for the acquisition of the right to the use of water, and for the construction and maintenance of canals, ditches, flumes, dams, reservoirs and wells for irrigation, and for mining, milling, the construction of waterworks for cities and towns, and stockraising.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That the unappropriated waters of the ordinary flow or underflow of every running or flowing river or natural stream, and the storm or rain waters of every river or natural stream, canyon, ravine, depression or watershed within those portions of the State of Texas in which by reason of the insufficient rainfall or by reason of the irregularity of the rainfall, irrigation is beneficial for agricultural purposes, are hereby declared to be the property of the public, and may be acquired by appropriation for the uses and purposes and in the manner as hereinafter provided.

SEC. 2. The storm or rain waters, as described in the preceding section, may be held or stored in dams, lakes or reservoirs built and constructed by a person, corporation or association of persons for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising, within those portions of Texas described in the foregoing section; and all such waters may be diverted by the person, corporation

or association of persons owning or controlling such dam, reservoir or lake for irrigation, mining, milling, the construction of waterworks for cities and towns, and stockraising.

SEC. 3. The ordinary flow or underflow of the running water of every natural river or stream within those portions of Texas described in section 1 of this act may be diverted from its natural channel for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising: *Provided*, that such flow or underflow of water shall not be diverted to the prejudice of the rights of the riparian owner without his consent, except after condemnation thereof in the manner as hereinafter provided.

SEC. 4. The appropriation of water must be either for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising.

SEC. 5. As between appropriators the first in time is the first in right.

SEC. 6. Every person, corporation, or association of persons who have constructed or may hereafter construct any ditch, canal, reservoir, dam or lake for the purposes named in this act, and taking the water from any natural stream, storage reservoir, dam or lake, shall within ninety days after this act goes into effect, or within ninety days after commencement of such construction, file and cause to be recorded in the office of the county clerk of the county where the headgate of such ditch or canal may be situated or to which said county may be attached for judicial purposes, in a well-bound book to be kept by said clerk for that purpose, a sworn statement in writing showing approximately the number of acres of land that will be irrigated, the name of such ditch or canal, the point at which the headgate thereof is situated, the size of the ditch or canal, in width and depth, and the carrying capacity thereof in cubic feet per second of time, the name of said stream from which said water is taken, the time when the work was commenced, the name of the owner or owners thereof, together with a map showing the route of such ditch or canal; and when the water is to be taken from a reservoir, dam or lake, the statement above provided for shall show in addition to the ditch and other things provided for, the locality of the proposed dam, reservoir or lake, giving the names or numbers of the surveys upon which it is to be located, its holding capacity in cubic feet of water, the acreage and surface feet of land that will be covered, and the limits of such lake, reservoir or dam, and the area of the watershed from which the storm or rain water will be collected.

SEC. 7. By compliance with the preceding provision of this act the claimant's right to the use of the water relates back to the time when the work of excavation or construction was commenced on said ditch, canal, reservoir, dam or lake: *Provided*, that a failure to file said statement shall in no wise work a forfeiture of such heretofore acquired rights, nor prevent such claimants of such heretofore acquired rights from establishing such rights in the courts.

SEC. 8. Any person, firm, association of persons or corporation may acquire the right to and appropriate for irrigation purposes the unappropriated waters of the ordinary flow or underflow of every running or flowing river or natural stream, and the storm or rain water of every river or natural stream, canyon, ravine, depression or watershed within those portions of the State referred to in section 1 of this act, by filing a

sworn statement in writing, to be recorded as provided in section 6 of this act, declaring his or its intention of appropriating such water. Said statement shall also show approximately the number of acres of land proposed to be irrigated, the name of such ditch or canal, the point at which the headgate thereof will be situated, the size of the ditch or canal in width and depth, and the carrying capacity thereof in cubic feet per second of time, the name of the person, firm, association or corporation appropriating such water, the name of the stream, and shall attach to such statement a map showing approximately the proposed route of such ditch or canal; and when the water sought to be appropriated or acquired is storm or rain water, the statement above required shall also show or describe the locality of the proposed dam, reservoir, or lake by giving the names or numbers of the surveys upon which it is to be located, and approximately the following, that is to say, its holding capacity in cubic feet of water, the acreage of land that will be covered and the area of the watershed from which the storm or rain waters will be collected: *Provided*, any person, association of persons or corporation who has heretofore had a survey made of the proposed route of his or its ditch shall have a preference right at any time within ninety days from the time this act shall take effect to file the statement hereinbefore required for the appropriation of water. Within ninety days next after filing of said statement the party or corporation claiming the right to appropriate the water shall begin actual construction of the proposed ditch, canal, dam, lake or reservoir, and shall prosecute the work thereon diligently and continuously to completion.

Sec. 9. "Completion" as used in the preceding section is hereby defined to be the conducting of the water in the main canal to the place of the intended use.

Sec. 10. Whenever any person, corporation or association of persons shall become entitled to the use of any water of any river, stream, canyon, or ravine, or the storm or rain water hereinbefore described, it shall be unlawful for any person, corporation or association of persons to appropriate or divert any such water in any way, except that the owner whose land abuts on a running stream may use such water therefrom as may be necessary for drinking purposes for himself, family and employes, and for drinking purposes for his and their livestock, and any one whose land may be located within the area of the watershed from which the storm or rain waters are collected may construct on his land such dams, reservoirs or lakes as may be necessary for the storage of water for drinking purposes for such owner of land, his family and employes, and for his and their livestock: *Provided*, that the excess of such water not used or contracted for use by such person, corporation or association of persons for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising may be appropriated by any person, corporation or association of persons in the manner hereinbefore provided for the appropriation of water.

Sec. 11. Corporations may be formed and chartered under the provisions of this act and of the general corporation laws of the State of Texas, and for the purpose of constructing, maintaining and operating canals, ditches, flumes, feeders, laterals, reservoirs, dams, lakes and wells, and of conducting, transferring and furnishing water to all persons entitled to the same for irrigation, mining, milling, the construction of water-

works for cities and towns and stockraising, and for the purpose of building storage reservoirs for the collection and storage of water for the uses before mentioned, and for mining, milling, the construction of waterworks for cities and towns, and stockraising. All such corporations shall have full power and authority to make contracts for the sale of permanent water rights and to have the same secured by liens on the land or otherwise, and to lease, rent or otherwise dispose of the water controlled by such corporation for such time as may be agreed upon, and in addition to the lien on the crops hereinafter provided for, the lease or rental contract may be secured by a lien on the land or otherwise. All persons who own or hold a possessory right or title to land adjoining or contiguous to any canal, ditch, flume or lateral constructed and maintained under the provisions of this act, and who shall have secured a right to the use of water in said canal, ditch, flume, lateral, reservoir, dam or lake, shall be entitled to be supplied from such canal, ditch, flume, lateral, dam or lake with water for irrigation of such land, and for mining, milling, the construction of waterworks for cities and towns, and stockraising in accordance with the terms of his or their contract: *Provided*, that in case of shortage of water from drought, accident or other cause the water to be distributed shall be divided among all consumers pro rata according to the amount he or they may be entitled to, to the end that all shall suffer alike and preference be given to none. The sale of the permanent water right shall be an easement to the land and pass with the title thereof, and the owner thereof shall be entitled to the use of the water upon the terms provided for in his or their contract with such person or corporation, and any instrument of writing providing a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land.

SEC. 12. All corporations and associations formed for the purpose of irrigation, mining, milling, the construction of waterworks for cities and towns, and stockraising, as provided in this act, are hereby granted the right of way, not to exceed one hundred feet in width, over all public, public free school, university and asylum lands of the State, with the use of the rock, gravel and timber on the right of way for construction purposes, and may obtain the right of way over private lands by contract. Any such corporation or association of persons, or any city or town, may also obtain the right of way over private lands, and also the land for dam sites and storage reservoirs and the water belonging to the riparian owner by condemnation, by causing the damages for any private property appropriated by any such persons, corporations or associations to be assessed and paid for as provided in cases of railroads, and the delay necessary to condemn and acquire the property needed for the ditch, dam site, reservoir and sewers for water supply and drainage or water of the riparian owner shall not work to the prejudice of the person, corporation or association of persons constructing such ditch, canal, lake, reservoir or dam, and shall not be taken into account in estimating the time for the completion of such work.

SEC. 13. All surplus water of a running stream not used or disposed of as provided in the preceding sections of this act shall be conducted back to the stream from which it was taken through a ditch or canal constructed under the provisions of this act, or through a natural channel leading back to the stream.

SEC. 14. All said persons, corporations and associations shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges for the accommodation of the public, and shall not impair the usefulness of such road or highway: *Provided*, that if any public road or highway or public bridges should be upon the ground necessary for the dam site, reservoir or lake, it shall be the duty of the commissioners court to change said road and to remove such bridges that the same may not interfere with the construction of the proposed dam, reservoir or lake: *Provided, further*, that the expense of making such change shall be paid by the person, firm or corporation owning such dam site, lake, reservoir or canal.

SEC. 15. Any person who shall wilfully or through gross negligence injure any irrigating canal or its appurtenances, wells, dams or reservoirs, or who shall waste the water thereof, or shall take the water therefrom without authority, shall be deemed guilty of a misdemeanor, and for each offense shall be liable to a fine not exceeding five hundred dollars.

SEC. 16. Any person who shall wilfully or maliciously injure or destroy any irrigation canal or its appurtenances, or any irrigation reservoir, dam, well, or any of the appurtenances thereto to the extent of fifty dollars, or if said injury shall amount in value to fifty dollars, shall be deemed guilty of a felony, and for each offense shall be punished by confinement in the State penitentiary for not less than two nor more than ten years.

SEC. 17. Unless such person, association of persons, or corporation shall fence their said ditch, canal, reservoir, dam or lake, and keep the same securely fenced, then there shall accrue in their favor no cause of action against owners of livestock for any trespass thereon.

SEC. 18. Every person, corporation or association of persons which has heretofore constructed or which may hereafter construct any ditch, canal, dam, lake or reservoir for the purpose of irrigation, and who shall lease or rent the water from said ditch, canal, dam, lake or reservoir to any person or association of persons or corporation owning any lands subject to irrigation from any such ditch, canal, lake, dam or reservoir, such person, corporation or association of persons owning such ditch, canal, lake, dam or reservoir shall have a preference lien, superior to every other lien, upon the crop or crops raised upon the land thus irrigated under such lease or contract.

SEC. 19. Any corporation organized under the provisions of the general laws of this State, or the provisions of this act, for the purpose of irrigation, shall have the power to acquire lands by voluntary donation or purchase or in payment of stock or water rights, and to hold and dispose of all such land and other property, and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes, feeders, reservoirs and wells, and may issue bonds and mortgage its corporate and other property and franchises to secure the payment of any debts contracted for the same: *Provided*, all lands acquired by said corporations, except such as are used for the construction, maintenance and operation of said canals, ditches, laterals, feeders, reservoirs, dams, lakes and wells, shall be alienated within twenty years from the date of acquiring said lands, or be subject to judicial forfeiture.

SEC. 20. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

SEC. 21. Whereas, it is necessary that irrigating canals should be built at once to afford water for irrigating purposes for the present year, therefore an emergency exists and an imperative public necessity demands the suspension of the constitutional rule which requires a bill to be read on three several days, and that this act take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—The foregoing act was presented to the Governor of Texas for his approval on the 9th day of March, A. D. 1895, but was not signed by him nor returned to the house in which it originated with his objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.—ALLISON MAYFIELD, Secretary of State.]

JUSTICES OF THE PEACE—DISQUALIFICATION OF.

CHAP. 22.—[H. B. No. 65.]—An act to amend article 1563, chapter 5, title 32, of the Revised Statutes of Texas, relating to disqualification of justices of the peace.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That article 1563, chapter 5, title 32, of the Revised Civil Statutes shall hereafter read as follows:

Article 1563. That if any justice of the peace shall be disqualified from sitting in an [any] civil case pending or which may hereafter be brought before him, or should such justice of the peace be sick or absent from the precinct, the parties to said suit may agree upon some person who is qualified to try said case, and in the event said parties fail to agree upon some person to try said cause at the first term of the court after service is perfect, it shall be the duty of the county judge in whose county said case is pending, upon the application of the justice of the peace in whose court said cause is pending, or upon the application of either party to said suit, to appoint some person who is qualified to try said cause, and the fact of the disqualification of the justice of the peace and the selection by agreement or appointment of some other person to try said cause shall be noted on the docket of said justice in said cause.

SEC. 2. Whereas, much inconvenience accrues to litigants in this State in cases in justice courts for the want of a law authorizing them to agree upon some person to try cases in which the regular justice is disqualified, therefore, an imperative public necessity exists requiring the suspension of the constitutional rule requiring bills to be read on three several days, and that this act take effect from and after its passage, and it [is] so enacted.

Approved March 21, 1895.